In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-84

RICHARD MCDANIEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on two counts of having illegally smuggled, transported, and concealed marihuana, in violation of 21 U.S.C. (1964 ed.) 176a. He was sentenced to concurrent prison terms of five years. The court of appeals affirmed in a lengthy opinion (Pet. App. 17-30).

Petitioner contends (1) that a routine inspection of the trunk of his car for aliens at a permanent im-

migration checkpoint eight miles north of Laredo, Texas, although authorized by statute, 8 U.S.C. 1357 (a)(3), was unreasonable under the Fourth Amendment,[1] and (2) that certain statements he made to the immigration officers following warnings under *Miranda* v. *Arizona*, 384 U.S. 436, were nevertheless inadmissible because petitioner refused to sign the waiver form and thus allegedly never waived his rights. These contentions were fully discussed and, we believe, properly rejected in the opinion below.

We point out, however, that the constitutionality of vehicle inspections for aliens under 8 U.S.C. 1357 (a)(3) is before this Court in *Almeida-Sanchez* v. *United States*, No. 71-6278, certiorari granted, May 22, 1972. Accordingly, the Court may wish to defer disposition of the instant petition until after *Almeida-Sanchez* is decided.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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[1] The inspection revealed four large burlap bags, partially covered with a Mexican newspaper. When petitioner stated that the bags contained alfalfa, the officers' suspicion, already activated by petitioner's nervous behavior, was further aroused. The officers thereupon asked petitioner to open the bags, which were found to contain 181 pounds of marihuana.

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